## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:19-CV-251-BO

ERIC E. ROWE,	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
•	)	
WAYNE COUNTY SHERIFF DEPUTY	)	
SELLERS, DEPUTY BLEYERS, and	)	
DEPUTY GUSTAFSON	)	
Defendants.	)	

This cause comes before the Court on defendants' motion to dismiss plaintiff's complaint in its entirety. Plaintiff, proceeding in this matter *pro se*, has responded by filing a motion to allow submission of evidence, to which defendants are opposed. For the following reasons, both motions are denied without prejudice.

## DISCUSSION

Plaintiff instituted this action by filing a motion for leave to proceed *in forma pauperis*. His motion was granted and his complaint was filed on June 26, 2019. In his complaint, plaintiff complains of "[a]gressive force, assaulted and suffered fractures to my face and which caused me to have PTSD and bad dreams." [DE 5]. Plaintiff claims that he has suffered permanent damages to his nasal passage, has been in contact with a psychiatrist, and finally that he has evidence that will prove what happened in the altercation. *Id*.

Defendants have moved to dismiss the complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Plaintiff's complaint is devoid of any allegation which would withstand a Rule 12(b)(6) motion at this time. However, as plaintiff proceeds *pro* se, he is permitted an opportunity to particularize his complaint.

## **CONCLUSION**

Accordingly, the court DENIES without prejudice defendants' motion to dismiss. Plaintiff is afforded to and including November 6, 2019, to file a particularized complaint. Plaintiff's failure to file a particularized complaint will result in dismissal of this action with prejudice. Defendants may re-file their motion to dismiss within fourteen days of plaintiff's filing of a particularized complaint. Plaintiff's motion to allow submission of evidence is denied without prejudice.

SO ORDERED, this 23 day of October, 2019.

TERRENCE W. BOYLE

CHIEF UNITED STATES DISTRICT JUDGE